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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

08350.1187-00000

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Signature _____

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name _____

Application Number

10/628,155

Filed

July 28, 2003

First Named Inventor

Lawrence W. CLARK

Art Unit

2121

Examiner

HARTMAN JR., RONALD D.

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

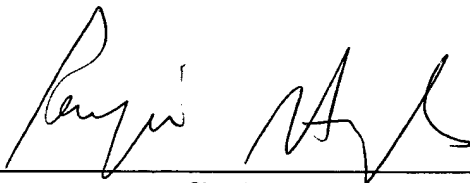
☐

attorney or agent of record.

Registration number _____

☒

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 55,288

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June 27, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
) Group Art Unit: 2121
Lawrence W. CLARK et al.)
) Examiner: HARTMAN JR., RONALD D.
Application No.: 10/628,155)
)
Filed: July 28, 2003)
) Confirmation No.: 4367
For: A METHOD AND APPARATUS OF)
MANUFACTURING)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request a pre-appeal brief review of the rejections set forth in the final Office Action mailed on March 29, 2006. Applicants respectfully assert that (1) the application has been at least twice rejected; (2) this request is being filed concurrently with a Notice of Appeal; (3) this request is being filed prior to an Appeal Brief; and (4) this request is five or less pages in length, all in accordance with the guidelines set forth in the Official Gazette Notice of July 12, 2005. Applicants request the prompt review of the Examiner's rejections set forth in the final Office Action.

Anticipation Rejection

In the final Office Action, claims 1, 7-9, and 12 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,240,328 to LaLonde et al. ("LaLonde."). An anticipation rejection is proper only if each and every element as set forth in the claims is found in a single prior art reference. M.P.E.P. § 2131.

Applicants respectfully assert that this rejection is improper because LaLonde does not disclose each and every element as set forth in the claims. For example, with respect to independent claims 1 and 9, LaLonde does not disclose, among other aspects, "a computer based method of displaying a changed manufacturing instruction, comprising the steps of establishing a desired fluid change associated with a manufacturing characteristic and enabling a change in a manufacturing instruction in response to said desired fluid change."

LaLonde discloses a manufacturing method for assembling a number of products by generating and scheduling dynamically, a number of assembly instructions from modeling information. LaLonde further discloses allowing for exact assembly instructions to be generated for a full theoretical scope of a product line, where the generated instructions do not require any human lookup or inference and that the instructions required to build the final product are derived from a model of the product. *See, e.g.*, Col. 1, lines 40-50; Col 2, lines 10-18 of LaLonde. In other words, LaLonde discloses utilizing modeling information to generate and dynamically schedule assembly instructions for a number of parts.

Nowhere does LaLonde disclose or suggest "establishing a desired fluid change associated with a manufacturing characteristic" and "enabling a change in a manufacturing instruction in response to the desired fluid change," as recited in claims 1 and 9. Accordingly, LaLonde cannot anticipate claims 1 and 9, and their dependents.

According to the Office Action, “the features upon which applicant relies (i.e. ‘a mechanism for changing the manufacturing instructions without a need to halt the operation of an assembly line’) are not recited in the rejected claim(s),” adding that “[a]lthough the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.” Office Action at page 2. Applicants specifically defined the term “fluid change” to include “a change without the need to halt the operation of an assembly line.” Specification at page 4, lines 1-2. That is, Applicants have acted as their own lexicographer and have provided a definite definition for the term “fluid change.” See *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980, 34 USPQ2d 1321 (Fed. Cir. 1995) (*en banc*), *aff’d* 517 U.S. 370, 38 USPQ2d 1461 (1996).

Also according to the Office Action, the element “establishing a desired fluid change associated with a manufacturing characteristic” may be “interpreted to be the functional equivalent of changing any, *meaning possibly more than one*, manufacturing characteristic of any, *meaning possibly more than one* product; Abstract; Figure 1; C2 L31-42; C2 L53-61).” Office Action at page 3. As noted above, Applicants have specifically defined the term “fluid change.” Moreover, the citations provided in the Office Action do not suggest or disclose making a change in manufacturing or assembly. They simply disclose generating and scheduling assembly instructions for products based on modeling information. See Abstract; Figure 1; C2 L31-42; C2 L53-61 of LaLonde. Thus, LaLonde does not disclose or suggest “establishing a desired fluid change,” as recited in claims 1 and 19.

Applicants submit that for similar reasons presented above, LaLonde does not disclose all of the elements of independent claim 12. For example, among other things, LaLonde fails to disclose or suggest “a computer controller connected to said workstations for receiving a desired

fluid change associated with a manufacturing characteristic” and “enabling a change in a manufacturing instruction in response to said desired fluid change,” as recited in claim 12. Reconsideration of the 102(e) rejection of claims 1, 7-9, and 12 is requested.

Obviousness Rejection

In the Office Action, dependent claims 2, 6, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over LaLonde in view of Official Notice; dependent claim 3 and independent claim 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over LaLonde in view of U.S. Patent No. 5,341,304 to Sakamoto et al. (“Sakamoto”); and dependent claims 4, 10, 11, and 13-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over LaLonde in view of U.S. Patent No. 6,477,437 to Hirota (“Hirota”). A prima facie case of obviousness requires, inter alia, that the prior art references, when combined, must teach or suggest every aspect of the claims. M.P.E.P. § 2143.

Sakamoto, Hirota, and the Official Notice taken in the Office Action do not remedy the deficiency noted above regarding LaLonde. Sakamoto discloses a production process where defects which occur on an assembly line are transmitted to a correction line, and further discloses that it is difficult to correct defects at the positions in the line where they occur. (*See, e.g.*, Col 2, line 5-11, 61-65.) Hirota discloses an assembly work support system that provides instructions from the system to a worker regarding work procedures, work contents, and particular instruction points, and receives information from the worker. (*See, e.g.*, Col 1, line 13-17.) Sakamoto and Hirota neither disclose nor suggest “establishing a change associated with a manufacturing characteristic” and “enabling said change in a manufacturing instruction in response to said changed manufacturing characteristic,” as recited in independent claim 18. Accordingly, Applicants respectfully requests withdrawal of the Section 103(a) rejection against claim 18.

In addition, claims 2-4, 6, 14-17, and 19, depend from independent claim 1 and are therefore allowable for at least the same reasons that independent claim 1 is allowable. Also, claims 10, 11, and 13 depend from independent claim 9 and are allowable for at least the same reasons that independent claim 9 is allowable.

Conclusion

For a more detailed account of Applicants' arguments traversing the rejections under 35 U.S.C. §§ 102(e) and 103(a) as set forth in the Final Office Action, reference is made herein to pages 7-11 of the Amendment filed in this application on January 19, 2006.

Because the Examiner's rejection of claims 1-4 and 6-19 includes factual and legal deficiencies with regard to the rejection under 35 U.S.C. §§ 102(e) and 103(a) and the M.P.E.P., Applicants are entitled to a pre-appeal brief review of the Final Office Action. Based on the foregoing arguments, Applicants request that the rejection of these claims be withdrawn and the claims allowed.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 27, 2006

By: 

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